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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,975	10/10/2002	Melanie Ann Pykett	025069-00001	9572

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WASHINGTON, DC 20005

EXAMINER
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YU, GINA C

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/069,975	<b>Applicant(s)</b> PYKETT ET AL.	
	<b>Examiner</b> Gina C. Yu	<b>Art Unit</b> 1617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 5-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Receipt is acknowledged of response filed on March 30, 2006. Claims 1, 2, 5-10 are pending. Claim rejections made under 35 U.S.C. § 103 (a) as indicated in the previous Office action dated March 30, 2005 are withdrawn in view of applicants' remarks. Obvious double patenting rejection made in the same Office action is withdrawn in view of the applicants' remark. New rejections are made in view of further search and consideration.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gubernick (US 6066327) in view of Chen (US 6524626 B2).**

Gubernick discloses an antioxidant mixture for cosmetic composition, which comprises magnesium ascorbyl phosphate and rosemary extract. See Example; col. 3, lines 39 – 40. The reference teaches using ascorbic acid or the derivative thereof, which indicates the art-recognized equivalency of the components. See col. 3, lines 41 – 50; Example. Magnesium ascorbyl phosphate is taught as the particularly preferred form of vitamin C. See Id. Gubernick also teaches that rosemary extract is a well-known antioxidant in cosmetic art, used in the amount of 0.0001-1 % by weight. See col. 4, lines 1-20. See instant claims 1, 8-10 (d). The reference also teaches using 0.01-20 % by weight of magnesium ascorbyl phosphate. See col. 3, lines 41 – 50; Example. See instant claims 8(c) -10(c).

Gubernick does not teach other types of the antioxidants that are listed in the instant claim 1.

Chen teaches topical compositions comprising ginseng (Panax Ginseng) berry juice and combined with other skin nutrients to provide essential vitamins and nutrients in a natural way. See abstract. The reference teaches adding ascorbic acid with ginseng extract in the composition as shown in Examples 9, 13, and 22. Example 9 discloses a composition comprising 5 % of ginseng extract and 1 % of ascorbic acid. See also Examples 13, 20, and 26.

While the claimed invention requires "0.005 to 0.1 % by weight of the composition", examiner notes that differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. See MPEP § 2144.05 (II). The court in In re Aller held, "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." See 220 F.2d 454, 456, 105 U.S.P.Q. 233, 235 (C.C.P.A. 1955). The court in In re Hoeschele also held, "the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages". See 406 F.2d 1403, 160 U.S.P.Q. 809 (C.C.P.A. 1969).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the composition of Gubernick by adding to the antioxidant composition ginseng berry juice or root extract as motivated by Chen

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because 1) both references teach multi-vitamin and antioxidant cosmetic compositions; and 2) Chen teaches that ginseng berry juice is a potent antioxidant and that ginseng root provides physiological benefits. The skilled artisan would have had a reasonable expectation of successfully producing a skin care composition with enhanced antioxidant property with multi-vitamin effect.

**Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gubernick and as applied to claims 1, 5-7 above, and further in view of Maybeck (US 5164182).**

While Chen teaches morus alba, the reference does not specifically teach 0.0005 –0.01 % as the weight range of the component as required by applicants.

Maybeck teaches using mulberry extract as a skin-lightening and anti-inflammatory agent. See instant claim 7. The reference teaches using dry mulberry extract in the amount ranging from 0.005 -1 wt %, most preferably 0.005-0.1 wt %. See col. 4, line 16. See instant claims 8 (b) -10 (b).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the antioxidant composition of the combined references by adding mulberry extract in a low amount as motivated by Maybeck because of the expectation of successfully producing an anti-aging cosmetic composition with skin lightening and anti-inflammatory effects in low amount.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 5-12 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicants' arguments that the present invention differs from Chen in the amounts of the active ingredients, examiner respectfully points out that no unexpected results over the prior art has been shown.

Applicants also argue that the use of ginseng and morus alba in Chen is different because the prior art uses the ingredients in a larger quantity. The argument is unpersuasive because the reference in fact does not limit the amount of the ginseng extract, and as discussed above, optimizing the weight amount of the active ingredients is well within the skill of the art and is not viewed as nonobvious or surprising..

### ***Conclusion***

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

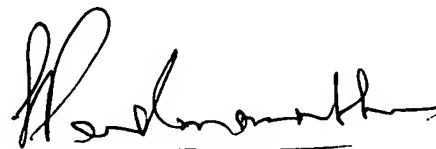
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 7:00AM until 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina Yu  
Patent Examiner



**SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER**